

CHICAGO AND



TRANSPORTATION COMPANY

NO.

8-180A166

Date

MAY 30 1978

Fee \$

50

May 19, 1978

ICC Washington, D. C.

BERNARD J. ALLEN  
DIANE KOHLER-RAUSCH  
JOAN A. SCHRAMM  
ASSISTANT SECRETARIES

RECORDATION NO.

9409

Filed & Recorded

File No.: A-10646

MAY 30 1978 - 2 35 PM

Interstate Commerce Commission  
Washington, DC 20423

INTERSTATE COMMERCE COMMISSION

Attention: Mr. Robert L. Oswald, Secretary

Gentlemen:

Pursuant to Section 20c of the Interstate Commerce Act, as amended, attached for recordation are Counterpart Nos. 1 to 4, inclusive, of Railroad Lease dated as of May 8, 1978, covering lease by this Company of two (2) locomotives.

The names and addresses of the parties to the transaction are as follows:

1. This Company, 400 W. Madison St.,  
Chicago, IL 60606, Lessee.
2. General Electric Co., The Northern Bldg.,  
125 S. Wacker Dr., Chicago, IL 60606,  
Lessor.

Enclosed is our check for \$50.00 to cover your recording fee. Please return Counterpart Nos. 1 to 3, inclusive, showing your recordation data.

Very truly yours,

*Diane Kohler-Rausch*  
Diane Kohler-Rausch  
Assistant Secretary

jas  
enclosures

cc: R. D. Smith  
R. L. Schardt\*  
J. D. O'Neill, Attn: H. Labno\*  
R. L. Alm, Attn: G. Lofgren\*  
R. F. Guenther, Attn: J. James\*  
D. E. Stockham, Attn: John Voldseth\*  
Arthur Andersen & Co., Attn: Gary Holdren\*  
T. E. Greenland\*

Mr. William R. Crisp  
Sales Manager  
General Electric Co.  
The Northern Bldg.  
125 S. Wacker Drive  
Chicago, IL 60606

RECEIVED

MAY 30 2 34 PM '78

CERTIFICATION UNIT

**Interstate Commerce Commission**  
**Washington, D.C. 20423**

**5/30/78**

**OFFICE OF THE SECRETARY**

**Diane Kohler-Rausch**  
**Chicago & North Western Transp. Co.**  
**400 W. Madison Street**  
**Chicago, Illinois 60606**


Dear

**MS Diane Kohler- Rausch**

The enclosed document(s) was recorded pursuant to the  
provisions of Section 20(c) of the Interstate Commerce Act,  
49 U.S.C. 20(c), on **5/30/78** at **2:35pm**  
and assigned recordation number(s)

**9409**

Sincerely yours,

  
**H.G. Homme, Jr.**  
Acting Secretary

Enclosure(s)

**SE-30-T**  
**(6/77)**

MAY 30 1978 - 2 35 PM

No. 4 of 5

This RAILROAD LEASE, dated 8<sup>th</sup> day of May, 1978 by and between GENERAL ELECTRIC COMPANY, a corporation of the State of New York (hereinafter sometimes called the "Lessor"), and Chicago and Northwestern Railroad, a corporation of the State of Delaware (hereinafter sometimes called "Lessee").

## WITNESSETH:

WHEREAS, the Lessor is constructing or will construct at its manufacturing plant at Erie, Pennsylvania, two (2) 144 ton, 1100 HP, B-B, switching locomotives (hereinafter referred to collectively as the "Locomotives", and individually as "Locomotive" or a "Unit"), bearing the Lessee's road numbers 1198 and 1199 in accordance with Lessor's specification number RY-24784A dated as of December 1977 together with any modifications or options thereto agreed upon between the Lessor and the Lessee (hereinafter called the "Specification"); and

WHEREAS, Lessor and Lessee are desirous of entering into a lease of the Locomotives as set forth above, pursuant to the terms and conditions hereinafter set forth and reliance upon the representations made by the Lessee herein;

NOW, THEREFORE, in consideration of the mutual promises, covenants, and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

1. Lease and Rental. The Lessor hereby leases to the Lessee and the Lessee hereby hires from the Lessor each of the said Locomotives for use upon lines of railroad owned or operated by Lessee or over which Lessee has trackage rights; provided, however, that the Locomotives shall not be used outside the forty-eight (48) contiguous states of the United States of America without the written consent

of Lessor. Said lease and use are upon the terms and subject to the conditions hereinafter set forth, such lease being effective as to each Locomotive for a period beginning with the delivery of each such Locomotive to the Lessee pursuant to Article 2 hereof, and ending as to each Locomotive as of a date three years following delivery of such Locomotive unless Lessee should exercise the option pursuant to Article 14 hereof. Such termination of leasing under this lease may be confirmed by an appropriate instrument executed by Lessor and/or Lessee.

For the use and rental of each Locomotive, the Lessee agrees to pay to the Lessor the sum of \$171.00 per calendar day payable semi-annually in advance. Rental of each Locomotive shall commence upon delivery of such Locomotive to Lessee pursuant to the provisions of Article 2 herein. Lessee agrees to pay, in addition to the rent, and as additional rental, all costs, charges, taxes (as provided in Article 6 hereof), fees and other expenses which are unavoidable and which are borne or incurred by Lessor or to which it may be subjected by reason of, or in connection with, this lease.

2. Delivery. (a) The Lessor will deliver the Locomotives to the Lessee f.o.b. Lessor's plant located at Erie, Pennsylvania, and Lessee shall accept the possession of such Locomotives at that point. Lessor will deliver the first such Locomotive in June, 1978, with delivery of the second Locomotive to be as soon thereafter as possible.

(b) In the event of any mutually agreed upon change in the specifications of any Unit or Units which affect the time required to manufacture such Unit or Units, the parties shall mutually agree upon new delivery dates for such Unit or Units.

(c) The Lessor shall not be liable for delays in delivery for failure to manufacture or deliver Units due to (1) causes beyond its reasonable control, or (2) to acts of God, acts of the Lessee, acts of civil or military authority, fires, strikes, floods, epidemics, war, riots, or delays in transportation, or (3) inability due to causes beyond its reasonable control to obtain necessary labor, materials, components or manufacturing facilities. In the event of any such delay, the date of delivery shall be extended for a period equal to the time lost by reason of the delay.

(d) On delivery of each Locomotive by the Lessor, the Lessee will assume full responsibility and risk of loss with respect to each such Locomotive so delivered.

(e) The Locomotive shall be tendered by Lessor to Lessee at the appropriate point of delivery hereinbefore specified and a representative of the Lessee shall inspect the Locomotive. If the Locomotive is in good order and condition and conforms to the Specifications and to all applicable Interstate Commerce Commission requirements and all standards recommended by the Association of American Railroads, such representative of Lessee shall execute a certificate of acceptance (hereinafter called the "Certificate of Acceptance") in the form attached hereto. Such Certificate of Acceptance shall constitute conclusive evidence that the Locomotive has been delivered to and accepted by the Lessee under this lease; provided, however, that the Lessor shall not be relieved of its obligations set forth in Article 7 hereof. The Certificate of Acceptance shall be delivered to the Lessor at the time of the delivery of each Locomotive to the Lessee. The Lessee shall promptly

after the execution of this agreement deliver to the Lessor a certificate stating the persons authorized to execute and deliver on behalf of the Lessee Certificates of Acceptance under this agreement.

3. Title to the Equipment. At all times during the continuance of this lease, title to each such Locomotive shall remain in the Lessor, its assigns or successors, and no title to any such Locomotive shall be vested in Lessee, and delivery of possession of the Locomotives, or any of them, to Lessee, and Lessee's possession of the Locomotives, or any of them, shall constitute a lending or bailment.

The Lessee will, throughout the term of this lease, cause the Locomotives to be kept numbered with their identifying numbers, as hereinabove specified. The Lessee will not change the number of any of the Locomotives without first obtaining consent of Lessor in writing. In any such case, the new number shall be set forth in a supplemental lease or in an amendment to this lease which the Lessor and Lessee shall execute, and the Lessee shall file or record such supplemental lease or amendment in each jurisdiction wherein this lease is recorded or filed in accordance with Article 13 hereof.

4. Responsibility for Locomotives. The Lessee agrees that, during the continuance of this lease and any extension thereof, it will, at its own cost and expense, maintain and keep all of the Locomotives in good order and repair, in accordance with Lessor's recommendations for maintenance, repair, replacement of parts and rebuilding, it being understood that any replacement components, and parts hereof, shall be in accordance with Lessor's Specifications therefor. The Lessor shall at all times have the right to inspect the Locomotives, but shall be under no obligation to inspect them,

and the Lessee's obligation to keep all the Locomotives in good repair shall not be affected in any manner by the failure of Lessor to inspect the Locomotives. Except for alterations or changes required by law or regulatory authorities, the Lessee shall not effect any change in the design, construction or specifications of the Locomotives, body or electrical equipment or components thereof, without the prior written authority and approval of the Lessor.

5. Loss or Destruction. In the event of loss or destruction of or irreparable damage to any of the Locomotives from any cause whatsoever during the term of this lease, the Lessee shall promptly and fully inform the Lessor in regard to such loss, destruction or damage, and the Lessee shall pay promptly to the Lessor a sum equal to the purchase price of each Locomotive so lost, destroyed or irreparably damaged, whereupon this lease shall terminate as to such Locomotive the Lessor shall not thereafter have any interest in any material salvageable from such Locomotive. For the purpose of this Article 5, Lessor and Lessee agree that the purchase price of each such Locomotive is \$444,488 less 1/2 of 1% for each complete thirty (30) day period following delivery.

6. Taxes and Liens. (a) The Lessee agrees that, during the continuance of this lease, it will promptly pay, as additional rentals, all taxes, assessments and other governmental charges levied or assessed against the Lessor, any assignee, or any subsequent assignee, as the case may be, on the account of its ownership of the Locomotives or any thereof, or on account of the use or operation thereof, or on account of the earnings arising therefrom (exclusive, however, of any tax in the nature of an income tax on

the rentals herein provided), including any sales or similar taxes payable on account of the leasing of the Locomotives; but the Lessee shall not be required to pay the same so long as it shall in good faith and by appropriate legal or administrative proceedings contest the validity or amount thereof, unless thereby, in the judgment of the Lessor, the rights or interests of the Lessor will be materially endangered. In the event any tax reports are required to be made on the basis of individual Units, the Lessee will either make such reports in such manner as to show the ownership of such Units by the Lessor or will notify the Lessor of such requirements and will make such reports in such manner as shall be satisfactory to the Lessor.

(b) The Lessee will pay and discharge, or cause to be paid and discharged, or make adequate provision for the satisfaction or discharge of, any debt, tax, charge, assessment, obligation or claim against the Lessee which, if unpaid, might become a lien or charge upon or against the title of the Lessor to any of the Units or which might have the effect of altering in any way the rights of the Lessor in such Units under this lease, but the Lessee shall not be required to pay or discharge any such debt, tax, charge, assessment, or obligation or claim so long as the validity or amount thereof shall be contested in good faith and by appropriate legal or administrative proceedings, unless such contest will, in the judgment of the Lessor, materially endanger the rights or interests of the Lessor.

7. Representations and Responsibility of Lessor. (a) The Lessor represents that the Locomotives to be manufactured hereunder will be free from defects in material, workmanship and title under normal use and service, and will be of the kind and quality described



in this lease. The foregoing representation is exclusive and in lieu of all other representations, whether written, statutory, oral or implied (INCLUDING ANY REPRESENTATION OF MERCHANTABILITY OR FITNESS FOR PURPOSE). If it appears within one (1) year after delivery of the Locomotive hereunder, that the Locomotive delivered hereunder does not meet the representations specified above, and the Lessee notifies the Lessor promptly, the Lessor, after verification as to the condition and usage, shall correct any defects, including non-conformance with the Lessor's specifications, at its option, either by repairing any defective part or parts made available to the Lessor, or by making available at the Lessor's plant at Erie, Pennsylvania, or warehouse, a repaired or replacement part. If requested by the Lessor, the Lessee will ship the defective part or parts, with shipping charges prepaid, to Lessor's plant at Erie, Pennsylvania, or to the warehouse designated by the Lessor. The foregoing shall constitute the sole remedy of the Lessee and the sole liability of the Lessor.

(b) The Lessor's responsibility shall not extend to any defect or defects which in its judgment reasonably exercised are caused in whole or in part by failure to comply with its operating and maintenance recommendations, by reason of improper storage or application, by misuse, negligence, accident or improper maintenance, or by repairs or alterations not authorized or approved by the Lessor. The Lessor does not guarantee materials or parts furnished by the Lessee or specified by the Lessee unless such specifications are agreed to by the Lessor.

(c) The Lessor's liability hereunder (except as to title) arising out of the supplying of the Locomotives under this lease,

(or under any extension of such lease or under subsequent sale of such Locomotives), or their use, whether on representations, contract or negligence, shall not in any case exceed the cost of correcting defects in the Locomotive, as herein provided. The Lessor's liability whether arising under breach of contract, negligence, tort, or in any other manner shall in no case include special, incidental or consequential damages including but not limited to transportation charges, the Lessee's labor or materials, or loss of use or revenue.

(d) If the Lessor is required to correct any defects or replace any defective parts in accordance with this Article, it is understood that this shall not in any way affect or abate Lessee's obligations to pay rent or incur other expense as provided in this agreement except as expressly provided in the last paragraph of Article 1 of this Agreement.

8. Compliance with Laws and Rules. The Lessee agrees to comply in all respects with all laws of the jurisdictions in which its operations involving the Locomotives may extend and with all lawful rules of the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Locomotives, to the extent that such laws and rules affect the operation or use of the Locomotives. In the event such laws or rules require the alteration of Locomotives, the Lessee will conform therewith, at its expense, and will maintain the same in proper condition for operation under such laws and rules; provided, however, that the Lessee may, in good faith, contest the validity and application of such law or rule in any reasonable manner which does not, in the opinion of the Lessor, adversely affect the property

rights of the Lessor as owner hereunder.

9. Lessee's Indemnities and Guarantees. The Lessee will save, indemnify and keep harmless the Lessor from and against all losses, damages, injuries, claims and demands whatsoever, regardless of the cause thereof, arising on account of the Locomotives or the use or operation thereof during the term of this Agreement, or any extension thereof. This covenant of indemnity shall continue in full force and effect notwithstanding any extension of this lease or the purchase of the Locomotives by the Lessee as provided in Article 14 hereof, or the termination of this lease in any manner whatsoever.

The Lessee will bear the risk, and shall not be released from its obligations hereunder, in the event of any damage to, or the destruction or loss of the Locomotives; provided, however, that the Lessor and any successor or successors to its manufacturing property and business shall not as to the Locomotives, be relieved from its responsibilities and obligations under Articles 7, 10 and 24 (a) hereof.

10. Responsibility for Patent Infringement. (a) Except in cases of designs, articles and materials specified by the Lessee and not manufactured by the Lessor, or manufactured by the Lessor to Lessee's design, the Lessor shall defend any suit or proceeding brought against the Lessee so far as based on a claim that any Locomotive or any part thereof, furnished under this lease constitutes an infringement of any patent of the United States, if notified promptly in writing and given authority, information and assistance (at the Lessor's expense) for the defense of the same and the Lessor shall pay all damages and costs awarded therein against the Lessee. In case said Locomotive, or any part thereof, in such suit is held to constitute infringement and the

use of said Locomotive or part is enjoined, the Lessor shall, at its own expense, and at its option, either procure for the Lessee the right to continue using said Locomotive or part; or replace same with noninfringing items; or modify it so that it becomes non-infringing; or take possession of said Locomotive and cancel the lease with respect to such Locomotive, in which event the Lessor to pay the reasonable cost of returning said Locomotive or Units to Lessor. The foregoing states the entire liability of the Lessor for patent infringement by said Locomotives, or any part thereof.

(b) With respect to any designs, articles or materials specified by the Lessee, and not manufactured by the Lessor, or manufactured by the Lessor to the Lessee's designs, the Lessee shall defend any suit or proceeding brought against the Lessor so far as based on a claim that any designs, articles or materials, or any part thereof, furnished under this lease constitutes an infringement of any patent of the United States, if notified promptly in writing and given authority, information and assistance (at the Lessee's expense) for the defense of same, and the Lessee shall pay all damages and costs awarded therein against the Lessor. In case of designs, articles or materials, or any part thereof, is held to constitute infringement, and the use thereof is enjoined, the Lessee shall, in respect of the Locomotives at its own expense, procure for Lessor, the right to continue using or manufacturing said designs, articles and materials, or shall permit Lessor, at Lessee's expense, to modify such designs, articles and materials so as to become noninfringing.

(c) It is understood that, notwithstanding any suits

or proceedings which may be brought against Lessor or Lessee based on a claim that any Locomotive, or any part thereof, furnished under this lease, constitutes an infringement of any patent of the United States, Lessee's obligation to pay rent with respect to such Unit shall continue for the term of this lease, unless Lessee has surrendered possession of such Unit pursuant to a valid court order.

11. Assignments by the Lessor. All or any of the rights, benefits and advantages of the Lessor under this agreement, including the right to the rent or to any other payments under this lease, and title to the Locomotives, may be assigned by the Lessor and reassigned by any assignee at any time and from time to time, provided, however, that no such assignment shall subject any assignee to or relieve the Lessor or the successor or successors to its manufacturing property and business from any of the obligations of the Lessor to construct and deliver the Locomotives in accordance with the Specifications or to respond to its responsibilities and obligations contained in Articles 7 and 10 hereof, or relieve the Lessee of its obligations to the Lessor under Articles 6, 9 and 10 hereof or any other obligation which, according to its terms and context, is intended to survive an assignment.

Upon any such assignment, either the assignor or the assignee shall give written notice to the Lessee, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall by virtue of such assignment acquire all of the Lessor's right, title and interest in and to the rights, benefits and advantages of the Lessor thereby assigned, subject only to such reservations as may

be contained in such assignment. From and after the receipt by the Lessee of the notification of any such assignment, all payments thereafter to be made by the Lessee hereunder shall, to the extent so assigned, be made to the assignee.

In the event of any assignment by the Lessor of its rights to receive any payments under this lease, the right of such assignee to such payments as may be assigned, together with any other rights hereunder which can be and are so assigned, shall not be subject to any defense, set-off, counterclaim, or recoupment whatsoever arising out of any breach of any obligation of the Lessor in respect of the Locomotives or the manufacture, construction, delivery, guarantee or warranty thereof, or in respect of any indemnity contained in this lease, not subject to any defense, set-off, counterclaim, or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Lessee by the Lessor. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Lessee, its successors or assigns, against the Lessor, its successors or assigns (other than assignees, as such, of rights, benefits, and advantages assigned pursuant to this lease). The provisions of this paragraph may be relied upon by any such assignee as a continuing offer by the Lessee to waive any remedies which it might otherwise possess for the enforcement of any and all such obligations of the Lessor against such assignee, which offer shall be conclusively presumed for all purposes to be accepted by the assignee by payment to the Lessor of the consideration for the assignment of any of the Lessor's rights under this

lease.

12. Assignments by the Lessee. The Lessee will not sell, assign, transfer, or otherwise dispose of its rights under this agreement nor transfer possession of the Locomotives to any other firm, person or corporation (except as herein otherwise provided) without first obtaining the written consent of the Lessor to such sale, assignment or transfer; provided that nothing in this article shall be deemed to restrict the right of Lessee to assign or transfer its rights under this Lease, including possession of the Units, to any corporation into or with which Lessee shall have become merged or consolidated or which shall have acquired or leased substantially all the lines of railroad of Lessee as an entirety or substantially as an entirety.

13. Recording. Prior to delivery of the first Locomotive hereunder, Lessee, at its own expense and without expense to Lessor, will cause this lease and any supplements hereto and any assignment and reassignment hereof to be filed with the Interstate Commerce Commission for recordation under Section 20c of the Interstate Commerce Act. Lessee will deliver to Lessor one copy of certificates or other evidence satisfactory to counsel for Lessor of such filing and of the payment of filing fees and taxes, if any, in connection therewith. In addition, Lessee shall do such other acts as may be required by Federal or State law, or reasonably requested by Lessor, for the proper protection of Lessor's title and interest in the Locomotives.

14. Option for Extension of Lease or Purchase of Locomotives.

(a) Prior to the termination of the original term of this lease the Lessee shall have the option to extend such lease for a second

term of three years subject to the terms and conditions of this agreement and upon a mutually agreeable rental fee which rental fee shall in no event be less than the rental fee during the original term of this lease. Lessee shall notify Lessor of its decision to exercise its option to extend this agreement at least one hundred and twenty (120) days but not more than one hundred and fifty (150) days prior to the expiration of the original term of this agreement. In the event the parties are unable to mutually agree as to the rental fee at least sixty (60) days prior to the termination of the original term of this agreement, Lessee shall make the Locomotives available for inspection by the Lessor and Lessor's customers at reasonable times and locations; and upon expiration of this Agreement, Lessee shall deliver possession of the Locomotives to Lessor at Lessor's designated point of delivery in Chicago, Illinois.

(b) At any time during the original term of this lease or any extension thereof, the Lessee shall have the option to purchase such Locomotives upon terms and conditions consistent with the provisions of Articles 7, 8, 9, 10 and 24 (a) hereof. The purchase price of each such Locomotive shall be the fair market value of Locomotives of the type and kind herein specified as of the date of sale. It is also understood that the above price will not include sales, use, excise or similar taxes. Consequently, in addition to the price, the amount of any Federal or State sales, use, excise or other similar taxes applicable to the sale or use of the Locomotives shall be paid by the Purchases, or in lieu thereof the Purchaser shall provide the Seller with a Tax Exemption Certificate acceptable to the tax authorities.



(c) Should Lessee not exercise its option pursuant to (a) hereof or (b) hereof at least sixty (60) days prior to the termination of the original term of this Agreement or additionally, with regard to (b) hereof, sixty (60) days prior to any extension of this Agreement, Lessee shall make the Locomotives available for inspection by Lessor and Lessor's customers at reasonable times and locations; and upon expiration of this Agreement, Lessee shall deliver possession of the Locomotives at Lessor's designated point of delivery in Chicago, Illinois.

15. Default. In the event of any default by the Lessee in respect to any of its obligations under the terms of this Agreement, the term of this lease shall immediately cease and terminate and the Lessor may, without any notice or demand, take or cause to be taken immediate possession of the Locomotives, and, in such event, all of the Lessee's rights in the Locomotives will thereupon terminate; provided, however, that such retaking shall not be deemed a waiver by the Lessor of its rights or remedies conferred upon the Lessor by this Agreement or by law including, but not limited to, Lessee's liability for the costs of restoring such Locomotive to original condition normal wear and tear excepted, and provided, further, that in the event of such retaking and thereafter of the payment by Lessee of the purchase price, together with a sum equivalent to the costs and expenses, including attorney's fees, incurred by the Lessor in such a retaking, and making good of all defaults hereunder, the Lessor at the time of such payment shall deliver the Locomotives to the Lessee in the condition they were in when retaken and by appropriate instrument or instruments transfer

to the Lessee title to and property in the Locomotives free and clear of all liens and encumbrances..

16. Payments by Lessee. The payments provided for in this Agreement shall be made by the Lessee in such coin or currency of the United States of America as at the time of payment is legal tender for the payment of public or private debts.

17. Survival of Guarantees, Representations and Indemnities. The representations and indemnities provided for in Articles 7, 8 9, 10 and 24 (a) hereof (except as may be otherwise specified therein) as to any matter arising prior to the termination of this lease shall survive the termination of the lease hereunder for any reason and the full payment of the purchase price by the Lessee.

18. Extension Not a Waiver. Any extension of time granted by the Lessor to the Lessee for the payment of any sum due under this agreement, or for the performance of any other obligation hereunder, shall not be deemed a waiver of any of the rights and remedies of the Lessor hereunder or otherwise existing.

19. Notice. Any notice hereunder to the Lessee shall be deemed to be properly served if delivered or mailed to the Lessee at 400 W. Madison St. Chicago Ill 60606 or such other address as may have been furnished in writing to the Lessor by the Lessee. Any notice to General Electric Company shall be deemed to be properly served if delivered or mailed to General Electric Company at 2901 East Lake Road, Erie, Pennsylvania, or at such other address as may have been furnished in writing to the Lessee by General Electric Company. Any notice hereunder to any assignee of General Electric Company or of the Lessee shall be deemed to

be properly served if delivered or mailed to such assignee at such address as may have been furnished in writing to the Lessor or the Lessee, as the case may be, by such assignee.

20. Execution of Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together will constitute but one and the same agreement, which will be sufficiently evidenced by any such original counterpart.

21. Article Headings. All Article headings are inserted for convenience only and will not affect any construction or interpretation of this Agreement.

22. Modification of Agreement. No variation or modification of this lease of Railroad Equipment and no waiver of any of its provisions or conditions will be valid unless in writing and signed by the duly authorized officials of the Lessor and the Lessee.

23. Pennsylvania Law. Except insofar as Federal law may be applicable, the terms and conditions of this lease and any subsequent sale and all rights and obligations thereunder shall be governed by the laws of the Commonwealth of Pennsylvania.

24. Representations and Warranties. (a) The Lessor represents and warrants that it will be the true and lawful owner of each Locomotive when delivered to the Lessee in accordance with Article 2 hereof and that at the time of such deliveries to Lessee each Locomotive will be free and clear of all liens and encumbrances of any nature whatsoever, it being understood that this provision shall not restrict the right of Lessor to assign title to the Locomotives, as provided in Article 11.

(b) The Lessee represents and warrants that:

- (i) The Lessee is a duly organized and validly existing corporation in good standing under laws of the State of Illinois; is qualified to do business in such jurisdictions as are necessary to carry out the transactions contemplated by this lease; and has power and authority to own its properties and carry on its business as now conducted.
- (ii) The execution and delivery of this lease is within its corporate authority, has been authorized by proper corporate proceedings and will not contravene any provision of law or of its charter, by-laws or any agreement or other instrument binding upon it, and the lease is a valid and binding obligation of the Lessee enforceable against the Lessee in accordance with its terms subject to any applicable bankruptcy or insolvency laws.
- (iii) No governmental authorizations are required for the execution and delivery of this lease or for the validity and enforceability thereof or the leasing of the Locomotives hereunder for the rentals and on the other terms and conditions provided for herein; or, if any such authorizations are required, they have been obtained.

- (iv) No litigation or administrative proceedings are pending, or to the knowledge of the Lessee threatened, against the Lessee, the adverse determination of which would affect the validity of this lease or the rights of the Lessor hereunder.
- (v) The rights of Lessor are as set forth herein and the title of the Lessor to the Locomotives are senior to the lien of any mortgage, security agreement or other instrument binding upon Lessee.

25. Opinions of Counsel. Prior to the delivery of the first locomotive hereunder, the Lessee will deliver to the Lessor an opinion of counsel for Lessee in form and substance satisfactory to counsel for Lessor, to the effect that (i) the Lessee is a duly organized and validly existing corporation in good standing under the laws of the State of Illinois; is qualified to do business in such jurisdictions as are necessary to carry out the transactions contemplated by this lease; and has the power and authority to own its properties and carry on its business as now conducted; (ii) the rights of Lessor as herein set forth and the title of Lessor to the Locomotives under this lease are and will be senior to the lien of any mortgage, security agreement, or other instrument binding upon Lessee; (iii) this Lease has been duly authorized, executed and delivered by the Lessee; has been filed and recorded in such Federal public offices, and such State public offices, within the United States of America, if any, as may be necessary for the full protection of the rights of the Lessor and assignees

of the Lessor; and is valid, binding and legally enforceable against the Lessee in accordance with its terms, subject to any applicable bankruptcy or insolvency laws, and (iv) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the execution and delivery of this lease; or if any such authority is necessary, that it has been obtained.

26. Investment Credit. Upon request of Lessor, Lessee agrees to take such reasonable steps and to complete such documents and papers as may be required, if any, to enable Lessor to obtain the benefit of the investment credit with respect to Locomotives under Section 38 of the Internal Revenue Code of 1954 as amended.

27. Cancellation. Because the Locomotives are being or will be manufactured specifically for lease to the Lessee pursuant to this Agreement with such options and modifications in the Specifications as Lessee and Lessor mutually agree upon, it is agreed that this Agreement may be cancelled by the Lessee only prior to manufacture of each such Locomotive and only upon payment by the Lessee of all reasonable cancellation charges. Following manufacture of each such Locomotive, Lessee shall have no right of cancellation.

28. Entire Agreement. This instrument contains the entire and only agreement between the parties relating to the subject matter hereof, there being merged herein all prior and collateral representations, promises and conditions in connection with said

subject matter. Except as specifically provided for under the terms of this lease, no modification, extension, waiver, renewal or termination of this lease, or any of the provisions thereof, shall be binding on either party hereto unless made in writing on its behalf by the duly authorized representative of such party.

IN WITNESS WHEREOF, General Electric Company has caused these presents to be executed and its seal to be affixed by its duly authorized official pursuant to lawful authority; and the Chicago and Northwestern Railroad has caused these presents to be executed and its seal to be affixed by its duly authorized officers pursuant to lawful authority, all as of the day, month and year first above written.


ATTEST:

  
Attesting Secretary

GENERAL ELECTRIC COMPANY

By: 

ATTEST:

  
Attesting Secretary

CHICAGO AND NORTH WESTERN  
TRANSPORTATION COMPANY

By: 

STATE OF ILLINOIS )

COUNTY OF COOK )

SS

I, Lee Swiontek, a Notary Public duly commissioned and qualified in and for the County and State aforesaid and residing therein DO HEREBY CERTIFY that J. D. O'NEILL and ROBERT D. SMITH, to me personally known and known to me to be, respectively, Assistant Vice President and Corporate Secretary of Chicago and North Western Transportation Company and the identical persons whose names are subscribed to the foregoing instrument appeared before me this day in person, and being first duly sworn by me, severally acknowledged to me that they are, respectively, Assistant Vice President and Corporate Secretary of said corporation; that as such officers they signed, sealed and delivered said instrument in behalf of said corporation by authority and order of its Board of Directors as the free and voluntary act and deed of said corporation, and as their own free and voluntary act; that they know the seal of said corporation; that the seal affixed to said instrument is the seal of said corporation; and that said corporation executed said instrument for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal as such Notary Public, at Chicago, Illinois, this 8 day of May, 1978.

Lee Swiontek  
Notary Public

LEE SWIONTEK

Notary Public

Cook Co. Illinois

My Commission Expires Oct. 27, 1980



STATE OF ILLINOIS )

COUNTY OF COOK )

SS

I, Dorothy R. Steiner, a Notary Public duly commissioned and qualified in and for the County and State aforesaid and residing therein DO HEREBY CERTIFY that Roger A. Boucher, J. C. Dwyer and C. S. Bressler, to me personally known and known to me to be, respectively, Attesting Secretary, Gen. Mgr-Domes. Loco. Dept. and Region Mgr.-Domes. Loco. Dept. of General Electric Company and the identical persons whose names are subscribed to the foregoing instrument appeared before me this day in person, and being first duly sworn by me, severally acknowledged to me that they are, respectively, Attesting Secretary, Gen. Mgr-Domes. Loco. Dept. and Region Mgr-Domes. Loco. Dept. said corporation; that as such officers they signed, sealed and delivered said instrument in behalf of said corporation by authority and order of its Board of Directors as the free and voluntary act and deed of said corporation, and as their own free and voluntary act; that they know the seal of said corporation; that the seal affixed to said instrument is the seal of said corporation; and that said corporation executed said instrument for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal as such Notary Public, at Chicago, Illinois, this 9th day of May, 1978.

Dorothy R. Steiner  
Notary Public

NOTARY PUBLIC STATE OF ILLINOIS  
MY COMMISSION EXPIRES APR. 1, 1979  
ISSUED THRU ILLINOIS NOTARY ASSOC.